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BALLOT PROPOSAL 08-1

An Overview

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On November 4, 2008, Michigan voters will decide whether to adopt legislation allowing the use and cultivation of marijuana for certain medical conditions. The result of a petition drive, Proposal 08-1 will appear on the ballot as follows:

***A LEGISLATIVE INITIATIVE TO PERMIT THE USE AND CULTIVATION OF MARIJUANA FOR SPECIFIED MEDICAL CONDITIONS***

*The proposed law would:*

- *Permit physician approved use of marijuana by registered patients with debilitating medical conditions including cancer, glaucoma, HIV, AIDS, hepatitis C, MS and other conditions as may be approved by the Department of Community Health.*
- *Permit registered individuals to grow limited amounts of marijuana for qualifying patients in an enclosed, locked facility.*
- *Require Department of Community Health to establish an identification card system for patients qualified to use marijuana and individuals qualified to grow marijuana.*
- *Permit registered and unregistered patients and primary caregivers to assert medical reasons for using marijuana as a defense to any prosecution involving marijuana.*

*Should this proposal be adopted?*

If a majority of the electors vote "yes", Proposal 08-1 will enact the "Michigan Medical Marijuana Act".

Current Statutory Provisions

Under Article 7 (Controlled Substances) of the Public Health Code, marijuana is listed as a Schedule 1 controlled substance, which means that it has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

Manufacturing, creating, or delivering marijuana or possessing it with intent to manufacture, create, or deliver is a felony. Knowingly or intentionally possessing marijuana, or using it, is a misdemeanor. The violations are punishable as shown in the table below.

Offense	Amount	Max. Imprisonment and/or Fine*
Manufacturing, creating, or delivering...	45 kg or more; or 200 plants or more	15 years; \$10 million
Manufacturing, creating, or delivering...	5 kg or more but less than 45 kg; or 20-199 plants	7 years; \$500,000
Manufacturing, creating, or delivering...	Less than 5 kg; or fewer than 20 plants	2 years; \$2,000
Knowingly or intentionally possessing	Any Amount	1 year; \$2,000
Using	Any Amount	90 days; \$100
*The maximum term is double for an individual convicted of a second or subsequent offense, or for an individual who is at least 18 and delivers or distributes marijuana to someone who is three or more years younger.		

Proposed Initiated Law

The proposed "Michigan Medical Marijuana Act" contains findings and declarations regarding the medical use of the substance and identifies 12 other states that do not penalize the medical use and cultivation of marijuana.

If the ballot proposal is approved, a "qualifying patient" who has been issued and possesses a "registry identification card" will not be subject to penalty for the medical use of marijuana if the amount does not exceed 2.5 ounces of "usable marihuana" (dried leaves and flowers) and 12 marijuana plants kept in an enclosed, locked facility. A "primary caregiver" who has a registry ID card will not be penalized for assisting a qualifying patient in the medical use of marijuana, subject to the same maximum quantities per patient. A physician will not be subject to penalty solely for providing a "written certification" for a patient who, in the physician's professional opinion, is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with it.

Any registered qualifying patient or registered primary caregiver who sells marijuana to someone who is not allowed to use it for medical purposes under the Act will have his or her registry identification card revoked and will be guilty of a felony punishable by up to two years' imprisonment and/or a maximum fine of \$2,000, in addition to any other penalty for the distribution of marijuana.

If enacted, the Act also will do all of the following:

- Establish requirements for the Department of Community Health (DCH) to issue registry identification cards to qualifying patients and primary caregivers.
- Allow a registered primary caregiver to receive compensation for costs associated with assisting a registered qualifying patient.
- Specify that a person is not subject to penalty solely for being in the presence or vicinity of the medical use of marijuana in accordance with the Act, or for providing marijuana paraphernalia to a registered qualifying patient or primary caregiver.
- Require the DCH to allow for petition by the public to include additional medical conditions and treatments.
- Make it a misdemeanor, punishable by up to six months' imprisonment and/or \$1,000, to disclose confidential information.
- Prescribe an additional \$500 fine for making a fraudulent representation to a law enforcement official regarding medical use of marijuana.
- Prohibit a person from being denied custody or visitation of a minor for acting in accordance with the Act.
- Provide that a registry identification card issued by another state would have the same force and effect as a card issued by the DCH.

The Act defines "qualifying patient" as a person who has been diagnosed by a physician as having a "debilitating medical condition", i.e., one or more of the following:

- Cancer, glaucoma, positive HIV status, AIDS, hepatitis C, ALS, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of those conditions.
- A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those consistent with multiple sclerosis.
- Any other medical condition or its treatment approved by the DCH.

A primary caregiver must be at least 21 years old and must never have been convicted of a felony involving illegal drugs.

#### Views on Proposal 08-1

Proponents of legalizing medical use of marijuana contend that patients battling cancer, AIDS, ALS, and other debilitating medical conditions should be allowed to use marijuana to relieve pain and alleviate the symptoms of their disease and/or treatment. Many believe, for example, that

marijuana use can help treat nausea that often is a side effect of chemotherapy treatment in cancer patients. Proposal 08-1 cites a 1999 report by the National Academy of Sciences' Institute of Medicine (IOM) that "discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions". Advocates of the proposal also point to a 2008 American College of Physicians (ACP) position paper, which they claim supports giving seriously ill patients access to medical marijuana.

The Michigan Coalition for Compassionate Care, a grassroots organization devoted to passing a medical marijuana initiative in Michigan, includes on its website information about a March 2008 poll indicating that 67% of Michigan voters support removing criminal penalties for the medical use of marijuana.

Opponents of Proposal 08-1 question supporters' reliance on the 1999 IOM report and the 2008 ACP position paper, and suggest that the use of Marinol (a prescription pill form of THC, the main psychoactive element in marijuana) renders the cultivation and use of marijuana unnecessary for patients seeking relief from pain and other symptoms. In addition, many painkillers and anti-nausea medications are available and can be effective, if prescribed and administered appropriately.

The IOM's recommendations focused on the need for continued research and clinical trials on the effectiveness of marijuana for symptom management; the physiological and psychological side effects of medicinal marijuana use; and the development of rapid, reliable, and safe delivery systems. The report suggested that any treatment involving smoked marijuana should be "administered under medical supervision in a manner that allows for assessment of treatment effectiveness". Similarly, the positions adopted by the ACP's recent paper support increased and rigorous scientific research and encourage the use of nonsmoked forms of THC that have proven therapeutic value.

Another issue that is raised in this discussion is whether legalizing medical use of marijuana will lead to increased recreational use of this substance or other illicit drugs, which still will be illegal under State and Federal law if Proposal 08-1 is approved. In addition, if the proposed law is enacted, the medical use of marijuana will remain illegal under Federal law.

#### Fiscal Impact of Proposal 08-1

If the proposal is approved by the voters, the responsibilities required of the Department of Community Health will result in an increased administrative burden and the likelihood of increased costs for the DCH. To the extent that the DCH already regulates the dissemination and use of controlled substances, these additional duties represent an extension of ongoing activities.

To offset the costs associated with the establishment of a patient registry and ID card system, other states have instituted application fees for individuals wishing to obtain marijuana registry ID cards. These fees range from \$25 in Alaska to \$150 in Nevada, with significant discounts available for individuals eligible for Medicaid or Federal Supplemental Security Income. Proposal 08-1 permits the DCH to establish an application or renewal fee of this nature.

If approved, the Act also will have an indeterminate fiscal impact on State and local corrections costs. There are no data to indicate how many registered qualifying patients or primary caregivers would be convicted of selling marijuana to someone not allowed to use it for medical purposes, or how many offenders would be convicted of disclosing confidential information in violation of the Act, or fraudulently representing to law enforcement any fact or circumstance relating to the medical use of marijuana. To the extent that the Act increases convictions or incarceration time, local governments will incur increased costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State will incur increased costs of

incarceration in State facilities at an average annual cost of \$32,000. Additional penal fine revenue will benefit public libraries.

There are no data to indicate how many offenders have been convicted of a misdemeanor for possessing or using marijuana. In 2007, 128 offenders were convicted of a felony for manufacturing, creating, or delivering 45 kg of marijuana or more and six were convicted of attempting the offense. An offender convicted of the Class C offense receives a sentencing guidelines recommended minimum sentence range of 0-11 months to 62-114 months. In 2007, nine offenders were convicted of an offense involving 5 kg to less than 45 kg of marijuana and one was convicted of attempt. An offender convicted of the Class D offense receives a sentencing guidelines recommended minimum sentence range of 0-6 months to 43-76 months. In 2007, 3,190 offenders were convicted of this offense for less than 5 kg of marijuana, and 480 were convicted of attempt. An offender convicted of the Class F offense receives a sentencing guidelines recommended minimum sentence range of 0-3 months to 17-30 months.

Of the total offenders convicted of a marijuana felony in 2007, 330 were sentenced to prison, 713 to jail, and 2,206 to probation; 565 received other sentencing (such as a delayed or suspended sentence or Holmes Youthful Trainee Act probation).

To the extent that the Act decreases convictions, the State and local governments will incur reduced costs of probation and incarceration, and public libraries will receive reduced penal fine revenue.